IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 21279 of 2000

Between:

G.G.K.Raju S/o.Surapa Raju
175, Sector-A, A W H O, Secunderabad-09.

..... PETITIONER

AND

1 A.P.State Financial Corporation Rep. by its Chief General Manager Chirag Ali Lane, Hyderabad - 02.
2 A.P.State Financial Corporation Rangareddy (West) Branch,
Rep.by its Asst. General Manager, D.No.5-8-342, (Ground Floor),
Cherag Ali Lane, Hyderabad-01.
3 Smt. Vidyavathi Giri W/o.D.K.Giri
210, Gunrock Enclave, Road No.12, Kharkana,
Secunderabad - 09.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction declaring the letter issued by Respondent No.2 in A.F.C./RR(W)MR & R/KSR/689542/2000-2001/717, Dt.26/09/2000 as illegal, arbitrary, un-just and opposed to principles of natural justice as well as the guidelines issued by the Hon'ble Supreme Court reported in AIR 1993 S.C. page 935 and consequently set aside the sale made in favour of the 3rd respondent as illegal and arbitrary and further direct the Respondent No.1 and 2 to accept the offer of the petitioner made in his leter Dt.11/10/2000.

Counsel for the Petitioner: MR.P.M.GOPAL RAO

Counsel for the Respondent No.1&2: MR.Y.N.LOHITA

Counsel for the Respondent No.3: None appeard

The Court made the following :

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.21279 OF 2000

ORDER

The petitioner, a former Army Officer, obtained a loan from Andhra Pradesh State Financial Corporation (1st respondent) for a (semi-mechanised) wire cut brick manufacturing unit. He was sanctioned term loan of Rs.8.92 lakhs, Rs.1.78 lakhs, Rs.0.71 lakhs and Rs.4.08 lakhs on various dates during 1991 to 1994. Towards collateral security for the loan, the petitioner offered an extent of Ac.3.00 of land in Poodur village, Ranga Reddy District. The plant and machinery and civil works of the petitioner's business enterprise was also hypothecated in favour of the 1st respondent Corporation.

As the petitioner was irregular in discharging the loan during the stipulated installments, the respondent-Corporation foreclosed the loan account in November 1996 and also seized the unit in January-1997 exercising powers under Section 29 of the State Financial Corporations Act,1951.

According to the respondent-Corporation after the seizure of the petitioner's unit, the assets were offered for sale for several occasions including by an advertisement released on 22-05-2000. Pursuant to this advertisement, the respondent-Corporation received an offer of Rs.6 lakhs from the 3rd respondent. The Board of Directors of the respondent-Corporation at the meeting on 19-08-2000 approved the sale in favour of the highest tenderer-3rd respondent and a sale letter was also issued on 08-09-2000.

Earlier by a letter dated 23-08-2000 the respondent-Corporation informed the

petitioner that it had received the highest bid of Rs.6 lakhs for the purchase of the buildings, plant and machinery and the collateral security property, that a 35% down payment of Rs.2.10 lakhs is payable within 30 days from the date of communication of sale and the balance 65% i.e., Rs.3.90 lakhs would be treated as term loan repayable in four years with a moratorium of six months i.e., in 15 equally quarterly installments @ Rs.0.26 lakhs, each carrying the prevailing rate of interest, that the petitioner is being provided an opportunity to match the offer of the highest bidder and that if the petitioner is agreeable to pay the amount according to the schedule offered to the highest tenderer, he should convey his willingness along with payment of Rs.0.25 lacs, within 15 days. The petitioner was also informed that he has to pay a further sum of Rs.1.85 lakhs towards balance down payment within 30 days from the date of letter and that after adjusting the sale consideration to his existing loan account, the balance outstanding amount would have to be paid by him for which purpose a separate schedule would be given at the prevailing rate of interest and that this further amount would also have to be paid after payment of the last installment as per the aforesaid terms. This letter dated 23-08-2000 was addressed by the respondent-Corporation to the known address of the petitioner as given by him. The petitioner did not respond to this letter. Thereupon, as already stated the sale letter was issued to the 3rd respondent on 08-09-2000.

Thereafter by his letter dated 22-09-2000 the petitioner addressed the respondent seeking a one time settlement. In his letter the petitioner set out various reasons why he could not start the production in his unit and how he incurred heavy financial loss after having invested substantial amounts.

By its letter dated 26-09-2000 the respondent-Corporation informed the petitioner that the sale was already finalized in favour of the 3rd respondent for Rs.6 lakhs, that as per procedure before issuing the sale letter to the 3rd respondent, the respondent-corporation had provided an opportunity to the petitioner by its letter dated 23-08-2000, to which there was no response from the petitioner and that therefore, the sale letter was issued to the 3rd respondent on 08-09-2000. As the sale letter was already issued to the purchaser, the sale could not be revoked, informed the respondent-Corporation

to the petitioner.

Another letter dated 11-10-2000 was addressed by the petitioner to the respondent-Corporation. In this letter, the petitioner stated that he understands that the 3rd respondent could not make the down payments of the sale amount of Rs.6 lakhs as fixed by the respondent-Corporation within the stipulated time and date and that he is therefore, prepared to pay sale consideration of Rs.6 lakhs towards full and final settlement of his loan account and that his offer be accepted and that as a token of advance he was enclosing a cheque dated 11-10-2000, for an amount of Rs.25,000/-.

Contending that no notice or opportunity was issued to him either before the foreclosure of the loan on 02-11-1996, seizure of the unit on 08-01-1997 or public auction of the mortgaged property and that he came to learn about the contents of the 1st respondent's letter dated 26-09-2000 only when he visited the office of the respondent for a one time settlement, the writ petition is filed seeking the relief of setting aside the sale made in favour of the 3rd respondent and for a direction to the respondent-Corporation to accept the offer of the petitioner as contained in his letter dated 11-10-2000 namely to accept the amount of Rs.6 lakhs towards full and final settlement of his loan account.

In its counter-affidavit, the respondent-Corporation stated that the purchaser had also remitted Rs.1,85,000/- on 08-10-2000 towards the balance sale consideration by way of a demand draft dated 09-10-2000 and that though the sale consideration amount was required to be paid on 07-10-2000, the 3rd respondent could not pay the same in time as
07-10-2000 happened to be holiday, as also 08-10-2000 and that the demand draft was obtained by the 3rd respondent on 09-10-2000. The counter-affidavit also asserts that as on 31-01-2000 the petitioner is due and payable a sum of Rs.20,39,075/-. The writ petition is filed contending that the guidelines issued by the Supreme Court in *MAHESH CHANDRA VS REGIONAL MANAGER,* with regard to exercise of powers under Section 29 of the Act were violated as the respondent-Corporation failed to offer an opportunity to the petitioner to offer the sale price as offered by the highest tenderer. In view of the fact that such an offer was made to the petitioner by the respondent-Corporation by its letter dated 23-08-2000, which was sent to his last known address, this contention of

the petitioner is without any substance. The petitioner has not pleaded or established that he had given any other address to the respondent-Corporation other than the address to which the letter dated 23-08-2000 was addressed by the respondent-Corporation.

In *STATE FINANCIAL CORPORATION VS. M/S JAGADAMBA OIL MILLS*, the earlier decision of the Supreme Court in Mahesh Chandra's case (1 supra) was overruled. The Supreme Court clarified that just as the State Financial Corporation is expected to act fairly in the mater of disbursement of loans, there is a corresponding duty on the borrowers to repay the installments in time and that if the repayments are not received within the stipulated time frame, it would disturb the equilibrium of financial arrangements of the State Financial Corporations. The Supreme Court clearly stated that the Corporation is an independent autonomous statutory body having its own constitution and Rules and in discharge of its functions, it is required to act in its discretion and that unless its action is *malafide*, even a wrong decision by the Corporation, is not open to challenge and the Courts cannot substitute the decision of the Corporation and that in such commercial matters, the Courts ought not to substitute their judgments for the judgment of the bodies to whom the task is consecrated by the legislation.

The petitioner does not dispute the assertion of the respondent-Corporation that the loan amount was foreclosed in 1996, the unit was seized on 08-01-1997 and that it was offered for sale for several occasions including by the 8th advertisement released on 22-05-2000. Having defaulted in the payment of installments, it was the obligation of the petitioner to have been alert and diligent in pursuing a one time settlement or any other process of negotiation with the respondent-Corporation for rescheduling of the loans for making arrangements to pay the dues. The respondent-Corporation cannot be forced to abide by the convenience of the petitioner in the matter of discharge of the loan amounts. The conduct of the respondent-Corporation in putting up the plant and machinery and the collateral security offered by the petitioner for sale and issuing a sale letter infavour of the 3rd respondent, suffers from no infirmity warranting interference by this Court.

The writ petition is without merits and is accordingly dismissed. The interim stay dated 07-11-2000 shall stand dissolved.

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GODA RAGHURAM,J

Dated 07 -02-2005

*TSNR

Note:

Issue CC in

One week

(B/O)

RAR

To

1 The Chief General Manager, A.P.State Financial Corporation, Chirag Ali Lane, Hyderabad - 02.

2 The Asst. General manager, A.P.State Financial Corporation Rangareddy (West) Branch, D.No.5-8-342, (Ground Floor),Cherag Ali Lane, Hyderabad-01.

3 Two C.D.Copies.